



Revisiting retaliation complaint

32 messages

Thu, Dec 20, 2018 at 10:38 AM

To: kseide2@emory.edu
Cc: maurice.middleton2@emory.edu, lynell.cadray@emory.edu
Bcc: [REDACTED]

Dear Ms. Seidenberg and OEI,

When we last discussed my case you made the decision not to pursue my inquiry concerning my former advisor, Clifton Crais. You based this decision on the determination that his threat to sue me, explicitly made with the intention of getting me to recant the complaint I had brought against him, did not meet the definition of an "adverse action." As this was the only part of my complaint that fell within your 180-day statute of limitations, you closed the inquiry on the grounds of the statute of limitations.

I wanted to bring to your attention that the EEOC's 2016 guidance on retaliation (https://www.eeoc.gov/laws/guidance/retaliation-guidance.cfm#_ftnref122) explicitly lists "filing a civil action" as a "materially adverse action."

They cite a Supreme Court case in support of this, *Burlington N.*, 548 U.S. (<https://www.law.cornell.edu/supct/html/05-259.ZO.html>), where Justice Breyer's decision says the following:

"see also *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U. S. 731, 740 (1983) (construing anti-retaliation provision to "prohibi[t] a wide variety of employer conduct that is intended to restrain, or that has the likely effect of restraining, employees in the exercise of protected activities," **including the retaliatory filing of a lawsuit against an employee**); *NLRB v. Scrivener*, 405 U. S. 117, 121–122 (1972) (purpose of the anti-retaliation provision is to ensure that employees are " 'completely free from coercion against reporting' " unlawful practices)."

As you can see, the decisive factor in determining a retaliatory adverse action is not (as you suggested) whether or not the action under other circumstances would be legal, but whether or not it is coercive with respect to preventing reporting, which Dr. Crais's threat clearly was (explicitly and intentionally so).

There are also several examples in the guidance that treat threats as adverse actions (*passim*). Obviously, a threat is still a form of coercion.

I am requesting that the Office of Equity and Inclusion reconsider my inquiry. Clearly, Dr. Crais's threat constitutes retaliation, and as this falls within your statute of limitations, my entire case, including all the preceding events, should be considered on their merits.

Sincerely,

Seidenberg, Kristyne Loretta <kseide2@emory.edu>

Thu, Dec 20, 2018 at 12:48 PM

Cc: "Middleton, Maurice" <maurice.middleton2@emory.edu>, "Cadray, Lynell" <lynell.cadray@emory.edu>, "Babcock, Nicole" <nicole.babcock@emory.edu>

Thank you Ms. [REDACTED]

There is no appeal process under OEI's guiding Policy.

Your former inquiry with OEI in no way equates or constitutes civil litigation or any legal process.

The OEI process is 100% internal and is governed by Emory Policy.

As we discussed previously, your allegations do not fall within the scope of the purview of the Office of Equity and Inclusion.

Sincerely,

Kristyne L. Seidenberg, MS, JD

Office of Equity and Inclusion

Emory University

201 Dowman Drive, Suite 305

Atlanta, GA 30322

P: (404) 712-9165

F: (404) 712-9108

Kseide2@emory.edu

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Thu, Dec 20, 2018 at 12:50 PM

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Thu, Dec 20, 2018 at 1:34 PM